

PLANNING COMMISSION MINUTES OF 04/25/05

2005-0143: Appeal of a Decision by the Director of Community Development denying an application for a Variance from SMC (Sunnyvale Municipal Code) section 19.34.030 and 19.46.060 (4) to allow a one-story addition to an existing one-story house resulting in a four-bedroom house without 2 covered parking spaces and total side yard setback of 10 feet where 12 feet is required. The property is located at **267 Eureka Court** (near San Diego Ave) in an R-0 (Low-Density Residential) Zoning District. (APN: 204-24-043) KD

Kelly Diekmann, Associate Planner, presented the staff report. This item is an appeal of an Administrative Hearing Officer's decision to deny a variance from the SMC for a home addition that would require the home have two covered parking spaces where only one currently exists. If the addition were approved two conditions would exist: the home would exceed 1800 square feet; and four or more bedrooms would exist. Either condition requires the home have two covered parking spaces. Staff could not make any of the three findings required to approve the variance: could not find an exceptional situation attributable to the project; could not find the intent and purpose of the ordinance still being served; and could not find that granting the variance would not be detrimental to the neighborhood.

Comm. Babcock asked for clarification of several items mentioned in the report. Staff responded that there are several conversions, including an enclosed interior courtyard and a bathroom addition, that have been previously completed but have not gone through the building permit process. Comm. Babcock asked if these items are part of the variance request or are they separate and is the Planning Commission to address these other items. Staff replied that Neighborhood Preservation will handle the conversion issues separately. Comm. Babcock and staff discussed the current third bathroom, the proposed laundry area and what used to be the garage. Staff commented that anything that stays will have to go through the building permit process and noted that all of the conversions are probably illegal and non-conforming.

Chair Moylan asked if there are any particular requirements to break this home up into a duplex or triplex. Staff replied that other than building permits for the remodels, there are no restrictions on the number of bedrooms or if the homeowner wants to rent the home out as long as there are two covered parking spaces. Chair Moylan commented that on his site visit to Eureka Ct. he noticed about five homes with garage conversions and two homes that have no garage at all. Staff said there is only one legal conversion on the street with approved permits on file with the City. Trudi Ryan, Planning Officer, clarified that until the mid-1980s it was legal to convert a garage into living space with the required building permits. In the mid-1980s the laws changed and the City had a six-month program allowing homeowners with already converted garages to legalize

the modifications with the City as legal non-conforming conversions. It used to be legal to eliminate garages and there were no minimum parking requirements to maintain on a site prior to mid-1980's. Mr. Diekmann added that parking requirements have changed over the years and now conversions are not allowed without the covered parking spaces on site. Chair Moylan questioned Assistant City Attorney, Rebecca Moon about Finding 3 (Attachment A) and whether granting this variance would be granting a special privilege to the applicant that nobody else enjoys if other garages in the neighborhood were already converted. In this case there may be neighbors that already enjoy this special privilege because it was legal at one time but is not now. Ms. Moon said she could not answer the question about previous exceptions without knowing if there are any neighborhood preservation issues going on with nearby properties. She also said if variances were granted because the neighbors had previous exceptions that the City would never be able to change the law.

Chair Moylan opened the public hearing.

Appellant Donata Makuta distributed and read from a document restating her case. She said she bought the house in 1997 after the laws about garage conversions had changed. At that time the house still had the open patio and the extended carport (or semi-garage) that was converted into a laundry and a storage room. After she purchased the home she enclosed the patio and made the back room into a living space with a bathroom which extended her home beyond the 1800 sq. ft. limit to 1960 sq. ft. She said the square footage without the garage and the carport area it is 1650 sq. ft. of actual livable space. She is requesting a variance and wants to put the parking spaces in front of the house rather than on the side. She stated that what she is proposing looks like what the other houses on the street look like. She has talked to the neighbors and found no opposition to her proposed plans. She has three tenants living in the home.

Chair Moylan asked Ms. Makuta if she understood that all three findings (Attachment A) had to be met to grant the variance and that variances are hard to get. Ms. Makuta said she understood that all three findings had to be met but that she hoped the Planning Commission would approve the variance as many of the other houses on the street are similar. She is asking for a legal conversion when others have not done legal conversions. Chair Moylan asked her if there is something about her property that this is unusual. She answered that her property plans are similar to other houses on the street. If she had to take down the rooms in the house she would have to let tenants go as the house would not be big enough and it would be difficult to meet the mortgage. She added that she has taken the washer and dryer out of the laundry room and put it outside with a cover but that it is not visible from street.

Chair Moylan closed the public hearing.

Comm. Babcock clarified with staff that the code reads that any home exceeding 1800 sq. ft. or results in four or more bedrooms requires two covered parking spaces. Staff confirmed that either the square footage or the number of bedrooms can make the requirement of two covered parking spaces and that both conditions exist.

Comm. Babcock made a motion for Alternative 1, to uphold the Administrative Hearing Officer's decision denying the variance request. Comm. Simons seconded.

Comm. Babcock commented that this is a single-family home that has been turned into a boarding type situation in a single-family neighborhood and it has a lot of parking issues. The ordinance was adopted for strong reasons and this is an example of why the ordinance is needed.

Final Motion:

Comm. Babcock made a motion on Item 2005-0143 for Alternative 1, to uphold the Administrative Hearing Officer's decision denying the variance request. Comm. Simons seconded.

Motion carried unanimously, 7-0.

Ms. Ryan stated that the decision is final unless appealed to the City Council with an appeal application and appeal fee within the 15-day appeal period.